IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 335 OF 1990

WITH

FIRST APPEAL NO. 599 OF 1990

The Board of Trustees of the
Port of Bombay ..Appellants

versus

Bai Jainabai w/o/ Habib Haji
Mohammed Chotani & Ors. ..Respondents

Mr. U. J. Makhija with Mr. A. D. Fegare i/b. Mulla & Mulla & Craigie Blunt & Caroe for the Appellants.
Mr. Rajesh Parab i/b. D. S. Sawant for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 29TH JUNE,2005

ORAL ORDER :

1. Heard Counsel for the Appellants and the Respondents.

2. Appeal No. 335 of 1990 is filed by the appellant against the dismissal of their Chamber summons No. 213 dated 26.2.1987 and Appeal No. 599

of 1990 is filed against the order allowing Chamber Summons of Defendant No.2 No. 387 dated 26.3.1987. Order in both the chamber summons is common passed by the City Civil Court on 4.4.1988.

3. Plaintiff is the Appellant. They obtained decree for vacant and peaceful possession of suit premises described in Exhibit 'A' to the plaint. Thereafter there were negotiations between the parties and decree was amended, by consent. Now under the amended clause, the plaintiff were given liberty to execute the decree in the following eventualities :

(1) If they require the suit premises for their own purpose, then at the expiration of their giving one month's notice to the Defendants to vacate the same;

(2) If the plaintiffs require the suit premises for leasing the final plot No. 67-B under the Town Planning Scheme, then also of their giving one month's notice to the defendants to that effect;

(3) In the event of Defendants failing or neglecting or committing any two defaults in the payment of accruing compensation and/or

property taxes and/or other Port Trust dues.

Thereafter, plaintiff took out Execution Application No. 827 of 1983 praying for issuance of Writ of Possession. But in the execution, ultimately, opponents obstructed the execution ad therefore plaintiff was required to take out Chamber Summons No. 213 dated 26.2.1987. The defendant No.2 also took out Chamber Summons No. 387 dated 26.3.1987. It was the contention of the defendant that the decree was not executable because there was no compliance to any of the amended clauses of the decree. That was crucial question. According to the plaintiff - decree holder the notice was sufficient compliance whereas according to the defendants there was non compliance, as contemplated.

4. The City Civil Court allowed the defendant No.2's Chamber Summons No. 387 dated 26.3.1987 and dismissed the plaintiff's Chamber Summons No. 213 dated 26.2.1987, and therefore these two Appeals.

5. Since the entire matter revolves around the notice given by the plaintiff, it has to be seen what is the notice and whether there is compliance to the amended clauses of the decree. This notice

is given by the plaintiff to the defendants before they started execution. Relevant portion of the notice is reproduced by the trial court in paragraph 7, which reads as under:

> "We have now been instructed by our clients to inform your clients through you, that the suit premises are required by our clients for their own use."

Clause 1 of the amended decree gives right to the plaintiff to give notice of vacating the premises to the defendants. Now, premises are required by them for their own use. There is no dispute that it was not a one month's notice. Therefore, the plain reading of the notice and the amended clause of the decree shows that the plaintiff had a right to possession of the suit premises, if the premises were required by the plaintiffs for their own use, and, therefore, if in exercise of the right acquired by the plaintiff for their own use and therefore, if in exercise of the right acquired by the plaintiff in the amended decree, the plaintiff have given notice to the defendants expressing their intention and if sufficient notice of one month, then the trial court erred in dismissing the plaintiff's chamber summons and allowing the defendant No. 2's Chamber Summons. In view of these facts, the

appeals of the appellant are required to be allowed. The chamber summons of the plaintiff bearing No. 213 dated 26.2.1987 will have to be heard afresh by the trial court, the defendant No.2's chamber summons is required to be dismissed. Therefore, Order :

ORDER

. Both the Appeals are allowed.

. Order of dismissal of Plaintiff's Chamber Summons No. 213 dated 26.2.1987 is set aside. The Chamber Summons to be sent back to the trial court for decision according to law after hearing the parties, and, the order allowing Chamber Summons No. 387 dated 26.3.1987 is set aside. Chamber Summons of Defendant No. 2 is dismissed.

29.6.2005 (D.G. DESHPANDE, J.)